

1
2
3
4
5
6
7 **UNITED STATES DISTRICT COURT**
8 **SOUTHERN DISTRICT OF CALIFORNIA**
9

10 JASON A. REDON,

11 Plaintiff,

CASE NO. 13cv1765 WQH-KSC

12 vs.
13 ANDRES RUIZ, et al.,

Defendants.

ORDER

14 HAYES, Judge:

15 The matter before the Court is Plaintiff's Motion for Leave to Amend. (ECF No.
16 76).

17 **I. Background**

18 On August 22, 2012, Plaintiff Jason A. Redon ("Plaintiff") commenced this
19 action by filing a complaint in the San Diego Superior Court alleging state and federal
20 constitutional violations. (ECF No. 1-2 at 1). The Complaint named the following
21 individuals and entities as defendants: Officer Brandon Jordan; Officer Andres Ruiz;
22 Investigator Derek Miller; San Diego City Attorney Jan Goldsmith; Deputy City
23 Attorney Miriam Milstein; and the City of San Diego, including the San Diego Police
24 Department ("Initial Defendants"). *Id.* On August 27, 2012, Plaintiff filed an amended
25 complaint in the San Diego Superior Court, naming the same Initial Defendants. (ECF
26 No. 1-2 at 2).

27 On July 5, 2013, Plaintiff filed a second amended complaint. (ECF No. 1-3.) In
28 addition to Initial Defendants, Plaintiff added the following individuals/entities as

1 defendants: San Diego County; Sergeant Bulkowski; Sergeant Grubbs; Officer Gibson;
 2 Officer Pottin; Officer Natal; San Diego Chief of Police William Lansdowne; Deputy
 3 City Attorney Michael Lee Ficken; and Deputy City Attorney Diana Doherty. *Id.* No
 4 amended summons was issued by the Superior Court. As such, these additional
 5 Defendants were never officially served.

6 On July 29, 2013, Initial Defendants filed a notice of removal of civil action in
 7 this Court. (ECF No. 1). On August 8, 2013, Initial Defendants filed a Motion to
 8 Dismiss and a Motion for a More Definite Statement. (ECF No. 2). Plaintiff filed a
 9 Motion opposing the Notice of Removal and an opposition to the Motion to Dismiss.
 10 (ECF Nos. 4, 6). On November 8, 2013, the Court denied the Plaintiff's motion
 11 opposing the Notice of Removal, granted the Motion to Dismiss, and granted Plaintiff
 12 leave to amend. (ECF No. 7). The Court concluded that the second amended complaint
 13 failed to reference any specific policy or practice, failed to identify any conduct by a
 14 specific defendant, and failed to allege any facts showing compliance with the
 15 presentation requirement of the California Tort Claims Act. *Id.* at 6.

16 On December 23, 2013, Plaintiff filed a third amended complaint, which is the
 17 operative pleading. (ECF No. 8). On January 13, 2014, the Initial Defendants filed a
 18 Motion to Dismiss for failure to state a claim. (ECF No. 11) On July 28, 2014, this
 19 Court granted in part and denied in part the Motion to Dismiss. (ECF No. 23). The
 20 Court dismissed all of Plaintiff's state law claims, the 28 U.S.C. § 1983 *Monell* claim,
 21 and all of the claims against Defendants City of San Diego, City Attorney Jan
 22 Goldsmith, and Miriam Milstein. The remaining causes of action were: Count 1 -
 23 violations of the First, Fourth, Fifth, Sixth, Eighth, and Fourteenth Amendments; Count
 24 3 - excessive use of force; Count 4 - false arrest; Count 5 - deprivation of property
 25 without due process of law; and Count 6 - administration of cruel and unusual
 26 punishment. In addition, a Count 7 alleging a violation of the Americans with Disability
 27 Act remained.

28 On August 11, 2014, the three remaining Initial Defendants (Ruiz, Jordan and

1 Miller) filed an answer to the amended complaint. (ECF No. 24). On July 24, 2015,
 2 Defendants Ruiz, Jordan, and Miller filed a Motion for Judgment on the Pleadings.
 3 (ECF No. 41).

4 On December 17, 2015, the Court granted the Motion for Judgment on the
 5 Pleadings in part and denied in part. (ECF No. 53). Specifically, the Court granted the
 6 motion as to Counts 1, 4, 5, 6, and 7 as well as all claims against Defendant Miller. The
 7 only remaining claim is Count 3—excessive use of force—against Defendants Ruiz and
 8 Jordan.

9 On December 21, 2015, Plaintiff filed a Motion for Default Judgment against
 10 Defendants Bulkowski, Grubbs, Gibson, Pottin, Natal, Lansdowne, Ficken, and
 11 Doherty. (ECF No. 55). On February 3, 2016, this Court denied Plaintiff's Motion for
 12 Default Judgment finding that Plaintiff never attempted to serve a summons on those
 13 Defendants. (ECF No. 66).

14 On April 16, 2016, Plaintiff filed the Motion for Leave to File a Fourth Amended
 15 Complaint. (ECF No. 76). On May 2, 2016, Defendants filed a response in opposition.
 16 (ECF No. 78). On May 9, 2016, Plaintiff filed a reply. (ECF No. 79).

17 **II. Discussion**

18 Federal Rule of Civil Procedure 15 mandates that leave to amend “be freely given
 19 when justice so requires.” Fed. R. Civ. P. 15(a). In *Foman v. Davis*, 371 U.S. 178
 20 (1962), the Supreme Court offered several factors for district courts to consider in
 21 deciding whether to grant a motion to amend under Rule 15(a):

22 In the absence of any apparent or declared reason—such as undue delay,
 23 bad faith or dilatory motive on the part of the movant, repeated failure to
 24 cure deficiencies by amendments previously allowed, undue prejudice to
 25 the opposing party by virtue of allowance of the amendment, futility of
 26 amendment, etc.—the leave sought should, as the rules require, be ‘freely
 27 given.’

28 *Foman*, 371 U.S. at 182; see also *Smith v. Pac. Prop. Dev. Co.*, 358 F.3d 1097, 1101
 (9th Cir. 2004) (citing *Foman* factors).

29 “[T]he grant or denial of an opportunity to amend is within the discretion of the
 30 District Court” *Foman*, 371 U.S. at 182. In applying the *Foman* factors, “[n]ot all

1 factors merit equal weight.” *Eminence Capital, LLC v. Aspeon, Inc.*, 316 F.3d 1048,
 2 1052 (9th Cir. 2003). “[I]t is the consideration of prejudice to the opposing party that
 3 carries the greatest weight.” *Id.* Defendants bear the burden of showing that they
 4 would be unduly prejudiced by the allowance of the amendment. *Id.* “Absent
 5 prejudice, or a strong showing of any of the remaining *Foman* factors, there exists a
 6 presumption under Rule 15(a) in favor of granting leave to amend.” *Id.* “[W]here the
 7 plaintiff has previously been granted leave to amend and has subsequently failed to add
 8 the requisite particularity to its claims, the district court’s discretion to deny leave to
 9 amend is particularly broad.” *Zucco Partners, LLC v. Digimarc Corp.*, 552 F.3d 981,
 10 1007 (9th Cir. 2009). “A district court does not abuse its discretion when it denies
 11 leave to amend where a plaintiff . . . did not propose any new facts or legal theories for
 12 an amended complaint and therefore give the Court any basis to allow an amendment.”
 13 *Boehm v. Shemaria*, 478 Fed. Appx. 457, 457 (9th Cir. 2012). When amendment would
 14 be futile, the district court need not grant leave to amend. *Gompper v. VISX, Inc.*, 298
 15 F.3d 893, 898 (9th Cir. 2002).

16 The Court concludes that it is not in the interest of justice to allow filing of a
 17 fourth amended complaint at this late stage in the proceedings. Plaintiff filed this
 18 motion shortly before the close of discovery¹ and seeks to significantly expand that
 19 number of claims and defendants in the complaint. In his motion to amend his
 20 complaint, Plaintiff proposes to add fourteen causes of action,² two new defendants, and

21 ¹ The discovery cut-off date was May 31, 2016. The Court notes that there is a
 22 pending joint motion to amend the scheduling order on the docket filed on May 24,
 23 2016. (ECF No. 81). This order requests that the Court continue all deadlines currently
 24 pending in the case by 180 days.

25 ² Plaintiff proposes adding the following causes of action and defendants: (1) an
 26 excessive force claim brought against Natal, Vasquez, an unnamed SDPD officers, and
 27 two new Defendants, Officer Siemer and Vasquez; (2) deprivation of property brought
 28 against Doherty; (3) “familial rights violation of civil rights pursuant to Title 42 U.S.C.
 § 1983” brought against the City Attorney and Doherty; (4) Eighth Amendment claims
 brought against the City of San Diego, the City Attorney of San Diego, and Doherty;
 (5) Due process and equal protection violations brought against all defendant police
 officers and all defendant city attorneys; (6) Monell claim brought against multiple
 defendants; (7) “failure to properly train” brought against multiple defendants; (8)
 failure to discipline and supervise Officer Ruiz and Jordan brought against multiple

1 several defendants who were previously dismissed. Many of the proposed causes of
 2 action have already been dismissed by the Court on the merits. For example, Plaintiff's
 3 proposed state causes of action (Counts 13 and 14) have already been dismissed on the
 4 merits as being time-barred. *See ECF No. 23 at 6.* Plaintiff's proposed Counts 2, 3, 4
 5 are the same as Counts 5 and 6 in the TAC, which were dismissed on the merits and
 6 with prejudice. *See ECF No. 53.* Plaintiff proposed 28 U.S.C. § 1983 *Monell* claim
 7 (Counts 6-12) was dismissed by the Court because Plaintiff failed to reference any
 8 specific practice or policy other than conclusory statements. Plaintiff's proposed
 9 amendments do not correct that error. Further, Plaintiff does not explain why he waited
 10 almost twenty months to file for leave to file an amended *Monell* claim. *See Acri v. Int'l*
 11 *Ass'n of Machinists & Aerospace Workers*, 781 F.2d 1393, 1398 (9th Cir. 1986) ("[L]ate
 12 amendments to assert new theories are not reviewed favorably when the facts and
 13 theory have been known to the party seeking the amendment since the inception of the
 14 cause of action."). The Court finds that re-pleading these causes of action would be
 15 futile.

16 Plaintiff also proposes to add several defendants who were previously dismissed
 17 by the Court on the merits, but Plaintiff does not allege any new facts against those
 18 defendants. *See ECF No. 23 at 8* (dismissing Defendants City of San Diego, City
 19 Attorney Jan Goldsmith, and Miriam Milstein). Plaintiff also proposes to add two new
 20 defendants, Officers Siemer and Vasquez, who have never been named in any of the
 21 previous complaints. Plaintiff's proposed complaint does not state any facts against
 22 those officers and it is unclear what role they played during the alleged incidents. The

23 defendants; (9) failure to train and supervise brought against the City of San Diego, the
 24 City Attorney of San Diego, and Ficken (ECF No. 76-21 at 16); (10) "unconstitutional
 25 policies and procedures use of force matrix" brought against the City of San Diego, San
 26 Diego Police Department, and unnamed policy makers; (11) "unconstitutional polices
 27 and procedures mandatory no contact order" brought against the City of San Diego,
 28 City Attorney of San Diego, unnamed policy makers, and Doherty; (12)
 "unconstitutional polices and procedures City of San Diego's Charter" brought against
 the City of San Diego and the City Attorney of San Diego; (13) negligence and
 negligent supervision brought against all defendants; and (14) violations of the Bane
 Act brought against all defendants.

1 Court finds that adding these defendants would be futile. Plaintiff also seeks to add
2 defendants and causes of action based on an event that occurred on September 21, 2015.
3 This event is unrelated to the operative complaint and could not be added to his
4 proceeding.

5 The Court has previously dismissed Plaintiff's Complaint, FAC, SAC, and
6 portions of his TAC. The case has been pending in this Court since July 29, 2013 and
7 the operative complaint was filed on December 23, 2013. Plaintiff gives no explanation
8 for the delay of more than two years in filing a motion for leave to file an amended
9 complaint. Plaintiff's claim of excessive use of force against Defendants Ruiz and
10 Jordan (Count 3) remains pending. Allowing the amended complaint would result in
11 significant and futile delay. The Court finds that it is not in the interest of justice to
12 allow Plaintiff to file the proposed fourth amended complaint.

13 Defendants have made a sufficiently strong showing of the *Foman* factors to
14 overcome the presumption in favor of granting leave to amend under Rule 15(a). After
15 considering the motions and Defendants' opposition, Plaintiff's Motion for Leave to
16 Amend is denied.

17 **III. Conclusion**

18 IT IS HEREBY ORDERED that Plaintiff's Motion for Leave to Amend (ECF
19 No. 76) is denied.

20 DATED: June 21, 2016

21 
22 **WILLIAM Q. HAYES**
23 United States District Judge

24

25

26

27

28